

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:11-CR-00195-BR

This matter is before the court on defendant's *pro se* motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2). (DE # 53.)

On 1 August 2011, defendant pled guilty to conspiracy to distribute and possess with the intent to distribute 28 grams or more of cocaine base (crack) and 500 grams or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. On 6 February 2012, the court sentenced defendant to 120 months imprisonment. Defendant did not appeal.

In the instant motion, defendant contends that his sentence should be reduced based on the 1 November 2011 amendments to the sentencing guidelines which changed the crack cocaine quantity levels in the Drug Quantity Table in U.S.S.G. § 2D1.1. Defendant was sentenced *after* the effective date of these guidelines, and therefore, they applied to his case. (See PSR, DE # 43, at 12 (recognizing that the 2011 edition of the guidelines was used to compute defendant's guideline range).) Defendant appears to claim that the drug quantities alleged in the criminal information are the drug quantities used to determine the base offense level. (See Mot., DE # 53, at 2 ("Under the Drug Quantity Table . . . , the base offense level for a conspiracy involving at least 500G but less than 1.5KG of cocaine base is level 32.").) This belief is inaccurate. "Types

and quantities of drugs not specified in the count of conviction may be considered in determining the offense level.” U.S.S.G. § 2D1.1, App. N.12 (2011) (citing U.S.S.G. 1B1.3(a)(2) (Relevant Conduct)). Defendant was held accountable for 2,098.95 grams of cocaine, 1,301.35 grams of crack, 3.8 grams of marijuana, and 750 milligrams of Ecstasy, whose total marijuana equivalency is 5,066.91 kilograms. (PSR, DE # 43, at 12.) That quantity of marijuana calls for a base offense level under U.S.S.G. § 2D1.1(c)(3) of 34. (*Id.*) Defendant is not eligible for a sentence reduction.

Defendant’s motion is DENIED.

This 23 August 2013.



W. Earl Britt
Senior U.S. District Judge